

On the question of pornography and child pornography, and those questions, people can go either way. The Supreme Court has sort of split in a lot of different ways. These forms of speech and press are quasi-speech. Depictions or acts of burning a flag were never what our Founding Fathers were fundamentally concerned about. They were concerned in early America about political speech, the right to speak out on public policy issues and say what you wanted to say.

James Madison, the father of our Constitution, whose birth we celebrated earlier in the month, the 250th anniversary of his birth, in talking about our goal in America as to free elections and people you chose could be elected, said: The value and efficacy of this right to elect and vote for people for office depends on the knowledge of comparative merits and demerits of the candidates for public trust, and on the equal freedom, consequently, of examining and discussing these merits and demerits of the candidate's respectively.

That suggests this is what America was founded about, to have a full debate about candidates and their position on issues. When do you do that? You do that during the election time. Not 2 years before an election.

I believe the contributing of money to promote and broadcast or amplify speech is covered by the first amendment. I do not think that is a matter of serious debate. Some have suggested otherwise. They said money is just an inanimate object. But if you want to be able to speak out and you cannot get on television, or you cannot get on radio, or you cannot afford to publish newspapers or pamphlets, then you are constrained in your ability to speak out.

The Supreme Court dealt with this issue quite plainly in *Buckley v. Valeo* in 1976. A string of cases since that time have continued that view.

In *Buckley* they said the following:

The first amendment denies government [that is, us] the power to determine that spending to promote one's political views is wasteful, excessive, or unwise.

They go on to say:

In a free society, ordained by our Constitution, it is not the government, not the government but the people individually as citizens and collectively as associations and political committees who must retain control over the quantity and range of debate on public issues in a public campaign.

What is that Court saying? That Court is saying the right to decide who says what in a political environment is the right of the people and associations of people. They have that right. The Government does not have the right to restrain them and restrict that and to limit their debate, even if it is aimed at us in the form of a negative ad and it hurts our feelings and we wish it had not happened. We do not have the right

to tell people they cannot produce honest ads, hard-hitting ads against us. If we ever get to that point, I submit, our country will be less free, you will have less ability to deal with incumbent politicians who may not be the kind that are best for America.

In the *Buckley* case the Court held that political contributions constitute protected speech under the first amendment.

I remain at this point almost stunned that earlier in this debate 40 Members of this Senate voted to amend the first amendment of the Constitution of the United States. Fortunately, 60 voted no. We had 38 vote yea in 1997 or 1998, and last year it dropped down to 33. But this year 40 voted for this amendment. It would have empowered Congress and State legislators, government, to put limits on contributions and expenditures by candidates and groups in support of and in opposition to candidates for office. Just as they outlined in *Buckley*.

That is a thunderous power we were saying here, that we were going to empower State legislatures and the U.S. Congress to put limits on how much a person and group could expend in support of or in opposition to a candidate. Think about that. Where are our civil libertarian groups?

I have to give the ACLU credit, they have been consistent on this issue. They have studied it. They know this is bad, and they have said so. But too many of our other groups—I don't know whether they are worried about the politics of it or what, but they have not grasped the danger to free speech and full debate we are having here.

It seems to me we are almost losing perspective and respect for the first amendment that protects us all. In this debate we have focused on what the courts have held with regard to the first amendment and to campaign finance. I remain confident that significant portions of the legislation as it is now pending before us will be struck down by Federal courts.

We ought not to vote for something that is unconstitutional. We swore to uphold the Constitution. If we believe a bill is unconstitutional, we should not be passing it on the expectation that someday a court may strike it down, even if we like the goal. If it violates the Constitution, each of us has a duty, I believe, to vote no. The idea that we can pass a law that would say that within 60 days of an election a group of union people, a group of businesspeople, a group of citizens, cannot get together and run an ad to say that JEFF SESSIONS is a no-good skunk and ought not be elected to office, offends me. Why doesn't that go to the heart of freedom in America? Where is our free speech crowd? Where are our law professors and so forth on this issue? It is very troubling to me, and I believe it goes against our fundamental American principles.

I will conclude. I make my brief remarks for the record tonight to say I believe this law is, on balance, not good. I believe its stated goal of dealing with corruption in campaigns is not going to be achieved. I believe it is the case with every politician I know, that votes trump money every time anyway. If you have a group of people in your State you know and respect, you try to help them. Just because they may give you a contribution doesn't mean that is going to be the thing that helps you the most. Most public servants whom I know try to serve the people of the State and try to keep the people happy and do the right things that are best for the future.

I believe this bill is not good, that the elimination of the corrupt aspects we are trying to deal with will not ultimately be achieved. At the same time, I believe we will have taken a historic step backwards, perhaps the most significant retrenchment of free speech and the right to assemble, and free press, that has occurred in my lifetime that I can recall. This is a major bit of legislation that undermines our free speech.

I know we have talked about all the details and all the little things. There are some things in this bill I like. I wish we could make them law. But as a whole, we ought not pass a piece of legislation that would restrict a group of people in America from coming together to raise money and speak out during an election cycle, 60 days, 90 days, 10 days, 5 days, on election day—they ought not be restricted in that effort. In doing so, we would have betrayed and undermined our commitment to free speech and free debate that has made this country so great.

Mr. President, I will proceed to see if I can close us out for the night.

MORNING BUSINESS

Mr. SESSIONS. Mr. President, I ask unanimous consent there now be a period for the transaction of routine morning business with Senators permitted to speak for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

TRIBUTE TO THE LATE CONGRESSMAN NORMAN SISISKY

Mr. WARNER. Mr. President, I am joined by my colleague, Senator ALLEN. We would like to address the Senate for a period not to exceed 10 minutes.

Mr. President, today, just hours ago, Senator ALLEN and I were informed of the loss of one of our Members of Congress from the State of Virginia, NORMAN SISISKY. It has been my privilege to have served with him in Congress throughout his career. Our particular responsibilities related to the men and